CACHE COUNTY ATTORNEY

CONFIDENTIAL MEMORANDUM

TO:	Cache County Council and County Executive
FROM:	Don Linton
DATE:	October 2, 2012
REGARDING:	Evaluation of Automobile Emissions Testing Statutes

I.

ISSUE

Recently a proposed air quality State Implementation Program (hereinafter referred to as "SIP") was proposed by the Utah Department of Air Quality (hereinafter referred to as "DAQ"). The SIP recommends Cache County require biannual automobile emission tests for certain vehicles in the County. When the issue was presented to the Cache County Council, the Council voted against the implementation of the part of the SIP that required vehicle emission tests. The issue presented in this memorandum addresses two statutes – Utah Code Ann. §§ 19-2-104 (See Exhibit A) and 41-6a-1642 (See Exhibit B), and how these two statutes apply to the Cache County Council's decision to reject that portion of the SIP requiring vehicle emission tests.

The analysis presented here addresses two issues: First, the analysis addresses the statutory authority of a state administrative agency to require vehicle emission tests in Cache County as recommended by the SIP; and second, the analysis addresses the power of a federal agency to require vehicle emission tests in Cache County because of the preemption doctrine.

II.

ANALYSIS

The Cache County Attorney's Office has discussed many of the issues presented in this Memorandum with the Attorney General's Office; however, this Memorandum is a legal analysis that has only been provided to the County Council and County Executive.

A.

The Statutes

1. Utah Code Ann. § 19-2-104: The Utah State Legislature has enacted the Air Conservation Act in Title 19, Chapter 2 of the Utah Code. The Air Conservation Act empowers an Air Quality Board (hereinafter referred to as "Board") to make rules for the abatement and control of air pollution in this state.[1] The Board consists of nine members[2] and is tasked, *inter alia*, to make rules "establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements . . . ."[3] The Board, "in conjunction with the governing body of each county identified in Section 41-6a-1643 [of the Utah Code] . . . shall order the director [of DAQ] to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 . . . relating to . . . the implementation of a standardized inspection and [air quality] maintenance program . . . ."

This board may also "issue orders necessary to enforce the provisions of [Title 19, Chapter 2 of the Utah Code]."[4] The Board must work with the director of DAQ to "ensure compliance with applicable statutes and regulations"[5] by reviewing any settlement negotiated by the director of DAQ who is tasked to "prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah."[6]

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[1] *See generally*, Utah Code Ann. § 19-2-104

[2] Utah Code Ann. § 19-2-13

[3] Utah Code Ann. § 19-2-104 (1)(g)

[4] Utah Code Ann. § 19-2-104 (3)(a)(ii)(A)

[5] Utah Code Ann. § 19-2-104 (3)(b)(i)

[6] Utah Code Ann. § 19-2-1077 (2)(a)(i)

2. **Utah Code Ann. § 41-6a-1642:** Effective October 1, 2012, "[t]he legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require . . . a certificate of emissions inspection . . . as a condition of registration or renewal of registration [of motor vehicles] . . . ."[7] By its terms, Utah Code Ann. § 41-6a-1642 was created by the Utah State Legislature in deference to federal law and federal regulations.

In other words, Utah Code Ann. § 41-6a-1642 is ***only applicable*** in two situations: First where a "county [is] required *under federal law* to utilize a motor vehicle emissions inspection and maintenance program"or, second, when an "emissions inspection and maintenance program *is necessary* to attain or maintain any national ambient air quality standard."[8]

B.

Application of Facts and Law

First, statutes are only interpreted by the courts if they are ambiguous. If "statutory language is plain and unambiguous," the courts "will not look beyond to divine legislative intent. Instead, [courts] are guided by the rule that a statute should be construed according to its plain language."[9]

1. **Statutes Should be Construed According to Plain Language:** The language in both Utah Code Ann. §§ 19-2-104 and 41-6a-1642 cannot be construed as ambiguous. First, the Air Conservation Act in Title 19, Chapter 2 of the Utah Code is an enabling statute that carefully defines the authority of the Air Quality Board. In very plain language, the Utah Legislature has limited the Board's rule making authority: the Board may only make rules "establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements."[10]

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[7] Utah Code Ann. § 41-6a-1642 (1)(a)(i)

[8] *Id.* (Emphasis added to the original text)

[9] *Allisen v. American Legion Post No. 134*, 63 P.2d 806, 809 (Utah 1988)

[10] Utah Code Ann. § 19-2-104 (1)(g)

With respect to Utah Code Ann. § 41-6a-1642, the language of this statute is similarly unambiguous. This statute applies in the two situations already noted: First, when a federal law mandates emissions testing; or second, when automobile emissions tests are necessary to maintain a national ambient air quality standard.

a. The Analysis of the Utah Attorney General's Staff as Far as it is Understood: Utah Code Ann. § 41-6a-1642, on its face, was written in deference to preemption doctrines that subordinate the states to the federal government's statutory and rule making authority. *Nonetheless, there is no federal law that mandates automobile emissions testing in Cache County*; rather, the Attorney General's Office has argued – as far as can be understood by the Cache County Attorney's Office, that when the Board requires a county to implement automobile emission testing, this requirement – once accepted by the Environmental Protection Agency, or EPA, has the force and authority of federal law and, therefore, the provisions of Utah Code Ann. § 41-6a-1642 become a state created mandate supported by a federal statute. However, this argument begs the question: assuming, for the purposes of this analysis, that once the Board requires a county to implement an automobile emission testing program – and once the Board's mandate is accepted by the EPA to become a federal law – *how does the Board create such a mandate in the first place when the legislature has forbidden it to do so without an agreement for the implementation from Cache County.*[11]

The authority given to the air quality board is a set of enumerated powers granted the Board by the state legislature in Utah Code Ann. § 19-2-104. These enumerated grants of authority not only establish the powers of the Board, but they act as a limitation upon these powers. *Id.* The Board cannot establish requirements for county emissions inspection without Cache County's agreement.[12]. Any argument that the Board can – without the County's agreement, include vehicle emissions testing in the SIP submitted to the EPA for the EPA's approval, would subvert the plain statutory language and grant of authority delegated to the Board by the Utah State Legislature.[13] It would be counter to the law of this state.

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[11] Utah Code Ann. § 19-2-104 (1)(g)

[12] Utah Code Ann. § 19-2-104 (g)

[13] *Id.*

b. The Second Prong of Utah Code Ann. § 41-6a-1642: Again, Utah Code Ann. § 41-6a-1642 has two prongs. The first requires a county to implement an automobile emissions program as "required under federal law." In the alternative, this statute mandates the implementation of automobile emission testing if the emission testing "is necessary" to meet or maintain a national ambient air quality standard.[14] DAQ has repeatedly asserted that automobile emissions testing is not "necessary" to reach or maintain national ambient air quality standards; rather, DAQ has asserted that alternatives to automobile emission testing in Cache County, while potentially costly, are available.[15]

In any event, DAQ and the Board are without authority to draw a con conclusion that vehicle emission testing is "necessary" under Utah Code Ann. § 41-6a-1642. Again, the powers of the Air Quality Board are enumerated and limited by the provisions of Utah Code Ann. 19-2-104 (g). The only entity with the authority to conclude that vehicle emission tests are "necessary"in Cache County is the EPA.. Without findings from the EPA that automobile emission tests are necessary, Utah Code Ann. § 41-6a-1642 is inapplicable to the analysis.

2. <u>Reaching a Consensus as Long as Alternatives Exist</u>: In one very important way, Utah Code Ann. § 19-2-104 (1)(g) is subordinate to Utah Code Ann. § 41-6a-1642: The first statute requires the Board to reach a consensus with Cache County before the Board can mandate automobile emission testing in Cache County. It seems consistent with the policy of Title 19, Chapter 2, as stated in Utah Code Ann. § 19-2-101 that the Utah State Legislature would prefer a cooperative effort between state and local entities in the creation of a SIP. If an agreement cannot be reached between the Board and Cache County, and in the event that *no alternatives are available other than vehicle emissions testing* – and these tests are "necessary" to meet federal standards according to the EPA, the County would be bound by Utah Code Ann. § 41-6a-1642 because of the federal mandate.

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[14] Utah Code Ann. § 41-6a-1642 (1)

[15] While asserting that alternatives to automobile emission testing exist, DAQ has not provided specific alternatives to automobile emission testing for the Cache County Council to consider. One of the impressions this creates is that while alternatives do exist, DAQ is either too busy or too disinterested in identifying and analyzing these alternatives. In deference to DAQ, this may be a false impression.

While reaching a consensus is sometimes difficult, I suggest it is better for the citizens of Cache County to have a say in the means and manner associated with any improvement in Cache County's air quality. If you have any other questions, please do not hesitate to contact me.

Don Linton,
Chief Deputy Cache County Attorney

Exhibit A

Utah Code Ann. § 19-2-104

Utah Code Ann. § 19-2-104

UTAH CODE ANNOTATED

*** STATUTES CURRENT THROUGH THE 2012 FOURTH SPECIAL SESSION. ***

TITLE 19. ENVIRONMENTAL QUALITY CODE
CHAPTER 2. AIR CONSERVATION ACT

Go to the Utah Code Archive Directory

Utah Code Ann. § **19-2-104** (2012)

Legislative Alert:
LEXSEE 2012 Ut. SB 21 -- See section 6.
LEXSEE 2012 Ut. HB 189 -- See section 1.

§ **19-2-104.** Powers of board

(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source;

(b) establishing air quality standards;

(c) requiring persons engaged in operations which result in air pollution to:

(i) install, maintain, and use emission monitoring devices, as the board finds necessary;

(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant; and

(iii) provide access to records relating to emissions which cause or contribute to air

pollution;

(d) (i) implementing:

(A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

(B) 40 C.F.R. Part 763, Asbestos; and

(C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and

(ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;

(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;

(g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;

(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2); and

(i) implementing lead-based paint remediation training, certification, and performance requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

(2) When implementing Subsection (1)(h) the board shall take into consideration:

(a) the impact of the business on overall air quality; and

(b) the need of the business to use automobiles in order to carry out its business purposes.

(3) (a) The board may:

(i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;

(ii) order the director to:

(A) issue orders necessary to enforce the provisions of this chapter;

(B) enforce the orders by appropriate administrative and judicial proceedings; or

(C) institute judicial proceedings to secure compliance with this chapter; or

(iii) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government,

or interested persons or groups.

(b) The board shall:

(i) to ensure compliance with applicable statutes and regulations:

(A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of $ 25,000 or more; and

(B) approve or disapprove the settlement;

(ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(iii) require the owner and operator of each new source which directly emits or has the potential to emit 100 tons per year or more of any air contaminant or the owner or operator of each existing source which by modification will increase emissions or have the potential of increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee sufficient to cover the reasonable costs of:

(A) reviewing and acting upon the notice required under Section 19-2-108; and

(B) implementing and enforcing requirements placed on the sources by any approval order issued pursuant to notice, not including any court costs associated with any enforcement action;

(iv) meet the requirements of federal air pollution laws;

(v) by rule, establish work practice, certification, and clearance air sampling requirements for persons who:

(A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:

(I) the contract work is done on a site other than a residential property with four or fewer units; or

(II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;

(B) conduct work described in Subsection (3)(b)(v)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;

(C) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II -- Asbestos Hazard Emergency Response; or

(D) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

(vi) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II -- Asbestos Hazard Emergency Response, to be accredited as inspectors, management planners, abatement project designers, asbestos abatement contractors and supervisors, or asbestos abatement workers;

(vii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of persons who, prior to establishment of the certification

requirements, had received relevant asbestos training, as defined by rule, and had acquired at least 1,000 hours of experience as project monitors;

(viii) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;

(ix) establish a program to certify private sector air quality permitting professionals (AQPP), as described in Section 19-2-109.5;

(x) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as inspectors, risk assessors, supervisors, project designers, or abatement workers; and

(xi) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.

(4) Any rules adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.

(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.

(6) (a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:

(i) the property's construction was completed before January 1, 1981; or

(ii) the testing is for:

(A) a sprayed acoustical ceiling;

(B) transite siding;

(C) vinyl floor tile;

(D) thermal-system insulation or tape on a duct or furnace; or

(E) vermiculite type insulation materials.

(b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(v) if:

(i) a sample from the property is tested for asbestos; and

(ii) the sample contains asbestos measuring greater than 1%.

(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

(9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

HISTORY: C. 1953, 26-13-6, enacted by L. 1981, ch. 126, § 14; 1986, ch. 84, § 2; 1988, ch. 188, § 1; 1990, ch. 85, § 1; renumbered by L. 1991, ch. 112, § 42; 1992, ch. 105, § 1; 1992, ch. 111, § 1; 1994, ch. 262, § 1; 1995, ch. 250, § 2; 1996, ch. 75, § 1; 1996, ch. 257, § 1; 1998, ch. 177, § 1; 2003, ch. 131, § 19; 2006, ch. 223, § 3; 2008, ch. 68, § 2; 2008, ch. 382, § 212; 2009, ch. 377, § 3; 2011, ch. 174, § 1; 2012, ch. 43, § 1; 2012, ch. 360, § 6.

NOTES: AMENDMENT NOTES. --The 2006 amendment, effective May 1, 2006, with retrospective operation for taxable years beginning on or after January 1, 2006, substituted "Section 59-10-1009" for "Section 59-10-127" in Subsection (3)(u) and made a stylistic change.

The 2008 amendment by ch. 382, effective May 5, 2008, updated references to conform to the recodification of Title 63.

The 2008 amendment by ch. 68, effective July 1, 2008, added (3)(x) and made related changes.

The 2009 amendment, effective May 12, 2009, added the (3)(a)(i) designation; added "that is not an adjudicative proceeding" in (3)(a)(i); added (3)(a)(ii) and (3)(a)(iii); and made a stylistic change.

The 2011 amendment, effective May 10, 2011, added (6).

The 2012 amendment by ch. 43, effective May 8, 2012, substituted (1)(d)(i)(A) through (C) for "15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter II -- Asbestos Hazard Emergency Response" and substituted the citation to the Toxic Substances Control Act for "that act" in (1)(d)(ii); added "by rule" in the introductory language of (3)(r); added "if" in (3)(r)(i) and added (3)(r)(i)(A) and (B); in (6), added "unless" and added (6)(a)(i) and (ii) and (6)(b); and made related changes.

The 2012 amendment by ch. 360, effective May 8, 2012, rewrote (3) and added (7) through (9).

This section has been reconciled by the Office of Legislative Research and General Counsel.

The Asbestos Hazard Emergency Response Act of 1986, cited several times in this section, is codified primarily as 15 USCS § 2641 et seq.

The Clean Air act, cited in Subsection (1)(f), is codified as 42 USCS § 7401 et seq.

Sections 402 and 406 of the Toxic Substances Control Act, cited in Subsection (1)(i) and relating to lead exposure reduction, are 15 USCS §§ 2682 and 2686.

Administrative rules, air quality, U.A.C. R307.

LexisNexis 50 State Surveys, Legislation & Regulations

Lead Abatement

NOTES TO DECISIONS

STANDING.

Utah Air Quality Board does not have either explicit or implicit authority over standing issues; this section lists powers of the Air Quality Board with no mention of standing. The Board's decision that two organizations lacked standing to challenge issuance of a permit for construction of a power plant was not entitled to judicial deference and was reversed, as the organizations had standing based on adverse effects alleged by members and, alternatively, because they were appropriate parties raising issues of significant public importance. Utah Chapter of the Sierra Club v. Utah Air Quality Bd., 2006 UT 74, 148 P.3d 960.

COLLATERAL REFERENCES

A.L.R. --Validity of state and local air pollution administrative rules, 74 A.L.R.4th 566.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

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Exhibit B

Utah Code Ann. § 41-6a-1642

Utah Code Ann. § 41-6a-1642

UTAH CODE ANNOTATED

*** STATUTES CURRENT THROUGH THE 2012 FOURTH SPECIAL SESSION. ***

TITLE 41. MOTOR VEHICLES
CHAPTER 6a. TRAFFIC CODE
PART 16. VEHICLE EQUIPMENT

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Utah Code Ann. § **41-6a-1642** (2012)

Legislative Alert:
LEXSEE 2012 Ut. HB 407 -- See section 1.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ **41-6a-1642.** Emissions inspection -- County program [Effective until October 1, 2012]

(1) The legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require:

(a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented:

(i) as a condition of registration or renewal of registration; and

(ii) at other times as the county legislative body may require to enforce inspection requirements for individual motor vehicles, except that the county legislative body may not routinely require a certificate of emission inspection, or waiver of the certificate, more often than required under Subsection (6); and

(b) compliance with this section for a motor vehicle registered or principally operated in the county and owned by or being used by a department, division, instrumentality, agency, or employee of:

(i) the federal government;

(ii) the state and any of its agencies; or

(iii) a political subdivision of the state, including school districts.

(2) (a) The legislative body of a county identified in Subsection (1), in consultation with the Air Quality Board created under Section 19-1-106, shall make regulations or ordinances regarding:

(i) emissions standards;

(ii) test procedures;

(iii) inspections stations;

(iv) repair requirements and dollar limits for correction of deficiencies; and

(v) certificates of emissions inspections.

(b) The regulations or ordinances shall:

(i) be made to attain or maintain ambient air quality standards in the county, consistent with the state implementation plan and federal requirements;

(ii) may allow for a phase-in of the program by geographical area; and

(iii) be compliant with the analyzer design and certification requirements contained in the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.

(c) The county legislative body and the Air Quality Board shall give preference to an inspection and maintenance program that is:

(i) decentralized, to the extent the decentralized program will attain and maintain ambient air quality standards and meet federal requirements;

(ii) the most cost effective means to achieve and maintain the maximum benefit with regard to ambient air quality standards and to meet federal air quality requirements as related to vehicle emissions; and

(iii) providing a reasonable phase-out period for replacement of air pollution emission testing equipment made obsolete by the program.

(d) The provisions of Subsection (2)(c)(iii) apply only to the extent the phase-out:

(i) may be accomplished in accordance with applicable federal requirements; and

(ii) does not otherwise interfere with the attainment and maintenance of ambient air quality standards.

(3) The following vehicles are exempt from the provisions of this section:

(a) an implement of husbandry;

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more;

(c) a vintage vehicle as defined in Section 41-21-1; and

(d) a custom vehicle as defined in Section 41-6a-1507.

(4) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(5) (a) Subject to Subsection (5)(c), the legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard may require each college or university located in a county subject to this section to require its students and employees who park a motor vehicle not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body if the motor vehicle is parked on the college or university campus or property.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this Subsection (5).

(c) The legislative body of a county shall make the reasons for implementing the provisions of this Subsection (5) part of the record at the time that the county legislative body takes its official action to implement the provisions of this Subsection (5).

(6) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The frequency of the emissions inspection shall be determined based on the age of the vehicle as determined by model year and shall be required annually subject to the provisions of Subsection (6)(c).

(c) (i) To the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the legislative body of

a county identified in Subsection (1) shall only require the emissions inspection every two years for each vehicle.

(ii) The provisions of Subsection (6)(c)(i) apply only to a vehicle that is less than six years old on January 1.

(d) If an emissions inspection is only required every two years for a vehicle under Subsection (6)(c), the inspection shall be required for the vehicle in:

(i) odd-numbered years for vehicles with odd-numbered model years; or

(ii) in even-numbered years for vehicles with even-numbered model years.

(7) The emissions inspection shall be required within the same time limit applicable to a safety inspection under Section 41-1a-205.

(8) (a) A county identified in Subsection (1) shall collect information about and monitor the program.

(b) A county identified in Subsection (1) shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by the designated committee to identify program needs, including funding needs.

(9) If approved by the county legislative body, a county that had an established emissions inspection fee as of January 1, 2002, may increase the established fee that an emissions inspection station may charge by $ 2.50 for each year that is exempted from emissions inspections under Subsection (6)(c) up to a $ 7.50 increase.

(10) (a) A county identified in Subsection (1) may impose a local emissions compliance fee on each motor vehicle registration within the county in accordance with the procedures and requirements of Section 41-1a-1223.

(b) A county that imposes a local emissions compliance fee shall use revenues generated from the fee for the establishment and enforcement of an emissions inspection and maintenance program in accordance with the requirements of this section.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Trucking Equipment

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

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